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CONDITIONAL SALE AGREEMENT

Dated as of December 1, 1975

between

THE TRAVELERS INSURANCE COMPANY

and

PACCAR INC

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CONDITIONAL SALE AGREEMENT dated as of December 1, 1975, between PACCAR INC (hereinafter called the Vendor or Builder as more particularly set forth in Article 1 hereof) and THE TRAVELERS INSURANCE COMPANY (hereinafter called the Vendee).

WHEREAS the Builder agrees to construct, sell and deliver to the Vendee, and the Vendee agrees to purchase, the railroad equipment described in Annex B hereto (hereinafter called the Equipment);

WHEREAS the Vendee is entering into a lease dated as of the date hereof with Union Tank Car Company (hereinafter called the Lessee) in substantially the form annexed hereto as Annex C (hereinafter called the Lease); and

WHEREAS First Security Bank of Utah, N.A. (hereinafter sometimes called the Assignee), is acting as agent for a certain investor pursuant to the Participation Agreement dated as of December 1, 1975 (hereinafter called the Participation Agreement), among the Assignee, the Vendee, the Lessee and The Travelers Indemnity Company;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Assignment; Definitions. The parties hereto contemplate that the Vendee will furnish that portion of the Purchase Price (as hereinafter defined) for the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 hereof and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Assignee pursuant to an Agreement and Assignment dated as of the date hereof between the Builder and the Assignee, as agent (such Agreement and Assignment being hereinafter called the Assignment).

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment,

both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

In case of such assignment, the Vendee will assign to the Vendor, as security for the payment and performance of all the Vendee's obligations hereunder, all right, title and interest of the Vendee in and to the Lease, pursuant to an Assignment of Lease and Agreement in substantially the form of Annex D hereto, and the Lessee shall consent thereto pursuant to a Lessee's Consent and Agreement in the form attached to Annex D (hereinafter called the Consent).

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the Equipment at its plant set forth in Annex B hereto, and will sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee and the Lessee (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, and each such unit (except to the extent, if any, referred to in Annex A hereto) will be new railroad equipment.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Vendee at the place or places specified in Annex B hereto (or if Annex B does not specify a place or places, at the place or places designated from time to time by the Vendee), freight charges, if any, prepaid in accordance with the delivery schedule set

forth in Annex B hereto; provided, however, that delivery of any unit of the Equipment shall not be made until this Agreement, the Assignment, the Lease and the Lease Assignment have been filed pursuant to Section 20c of the Interstate Commerce Act; and provided, further, that the Builder shall have no obligation to deliver any unit of the Equipment hereunder subsequent to the commencement of any proceedings specified in clause (c) of Article 15 hereof or clause D of § 10 of the Lease or the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default. The Builder agrees not to deliver any unit of Equipment hereunder following receipt of written notice from the Vendee or the Assignee (a) of the commencement of any such proceedings or the occurrence of any such event, as aforesaid, or (b) that any of the conditions contained in Paragraphs 5 or 6 of the Participation Agreement have not been met as of the First Delivery Date referred to therein.

Any Equipment not delivered at the time of receipt by the Builder of the notice specified in the last sentence of the first paragraph of this Article 3 and any Equipment not delivered and accepted hereunder on or prior to June 30, 1976, shall be excluded from this Agreement and the Vendee shall be relieved of its obligation to purchase and pay for such Equipment. If any Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. Pursuant to the Participation Agreement, the Lessee has agreed to purchase such excluded Equipment, and any Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof, from the Builder as provided in Paragraph 1 of the Participation Agreement.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of

the Vendee (who may be employees of the Lessee) and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect the materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee of the Lessee) shall execute and deliver to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Vendee and are marked in accordance with Article 9 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

On delivery and acceptance of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the delivery to and acceptance by or on behalf of the Vendee of any unit of Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof shall be ineffective, ab initio, to create in or transfer to the Vendee any legal or beneficial right or interest in such unit or (except as provided in the first paragraph of Article 4 hereof) to impose on the Vendee any liability, obligation or responsibility with respect thereto; any right or interest in any such unit created in or transferred to, or purported to be created in or transferred to, the Vendee shall be held by the Vendee solely as trustee for the benefit of the Lessee.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Vendee and the Lessee as set forth in the Builder's invoice or invoices delivered to the Vendee and, if the Pur-

chase Price is other than the base price or prices set forth in Annex B, the invoice or invoices shall be accompanied by, or have endorsed thereon, the agreement or approval of the Lessee and the Vendee (such invoice or invoices being hereinafter called the Invoices). The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If on any Closing Date (as hereinafter defined in this Article) the aggregate Purchase Price of the Equipment for which settlement has theretofore been and is then being made under this Agreement would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as the Vendee may at its option agree to prior to delivery of any unit or units of Equipment that, but for such agreement, would otherwise be excluded from this Agreement), the Builder (and any assignee of the Builder) will, upon request of the Vendee, enter into an agreement excluding from this Agreement such unit or units of the Equipment then proposed to be settled for and specified by the Vendee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price under this Agreement to not more than the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as aforesaid) and the Vendee shall take such other steps, including the execution of instruments of transfer, as may be reasonably requested by the Lessee for the purpose of acknowledging and perfecting the interest of the Lessee in any unit of Equipment so excluded from this Agreement, and the Vendee shall have no further obligation or liability in respect of units so excluded.

The Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted by the Vendee as is provided in Item 2 of Annex A hereto (each such group being hereinafter called a Group). The term "Closing Date" with respect to any Group shall mean such date (not later than June 30, 1976, such date being herein called the Cut-Off Date), occurring not more than ten business days following presentation by the Builder to the Vendee of the Invoices and of the Certificate or Certificates of Acceptance for the Equipment and written notice thereof by the Builder to the Lessee, as shall be fixed by the Lessee by written notice delivered to the Vendee and the Vendor at least six business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York; Salt

Lake City, Utah; or Chicago, Illinois, are authorized or obligated to remain closed.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay to the Vendor in immediately available funds not later than 11:00 a.m. local time at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on the Closing Date with respect to each Group (i) an amount equal to 28.6882% of the aggregate Purchase Price of such Group plus (ii) the amount, if any, by which (x) 71.3118% of the Purchase Price of all units of the Equipment for which settlement has theretofore and is then being made, as set forth in the Invoice or Invoices therefor (said invoiced prices being herein called the Invoiced Purchase Prices), exceeds (y) the Maximum Conditional Sale Indebtedness specified in Item 6 of Annex A and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this clause (ii); and

(b) in 36 consecutive semiannual instalments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (herein called the Conditional Sale Indebtedness) shall be payable on each January 15 and July 15, commencing January 15, 1977, to and including July 15, 1994 (or if any such date is not a business day, on the next succeeding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness from time to time outstanding shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of 9.5% per annum. Such interest shall be payable, to the extent accrued, on July 15, 1976, and on each Payment Date thereafter. The instalments of principal payable on each Payment Date shall be calculated on such a basis that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the amount and allocation of principal and interest on such Payment Date set forth in Schedule I hereto. The Vendee will

furnish to the Vendor and the Lessee promptly after each Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Vendee will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof at the rate of 10.5% per annum.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7 hereof, the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 15 and 16 hereof), but not limiting the effect of Article 22 hereof, it is understood and agreed by the Vendor that the liability of the Vendee or any assignee of the Vendee for all payments to be made by it under and pursuant to this Agreement, including any liability arising out of or in connection with the performance of its obligations hereunder and excluding only the obligations set forth in the proviso in the third paragraph of Article 12 hereof and the payments to be made pursuant to Article 19 hereof and subparagraph (a) of the third paragraph of this Article, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by the Vendee only to the extent that the Vendee or any assignee of the Vendee shall have actually received sufficient "income or proceeds from the Equipment" to make such payments. In addition, the Vendor agrees that the Vendee (i) makes no representation or warranty, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease in so far as it relates to the Lessee (or any document relative thereto) or of any of the Lessee's obligations thereunder and (ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or

other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment, to the Vendor's rights under the Lease against the Lessee and the Equipment and to the Vendor's rights under the Consent against the Lessee. As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee or any assignee of the Vendee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 10 or any other provision of the Lease and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee or any assignee of the Vendee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Vendee or any assignee of the Vendee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Vendee or any assignee of the Vendee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Notwithstanding anything to the contrary contained in Article 15 or 16 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this

paragraph, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph. Nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder or to proceed against the Lessee under the Lease or the Consent.

ARTICLE 5. Security Interest in the Equipment.

The Vendor shall and hereby does retain a security interest in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Lessee as provided in this Agreement and the Lease. Any and all parts installed on and additions and replacements made to any unit of the Equipment (i) which are not readily removable without causing material damage to such unit, (ii) the cost of which is included in the Purchase Price of such unit or (iii) which are required for the operation or use of such unit by the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body, shall constitute accessions to the Equipment and shall be subject to all terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, and all the Vendee's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute a bill or bills of sale for the Equipment releasing its security interest therein to the Vendee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address referred to in Article 21 hereof, (b) execute and deliver

at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 6. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes including any Canadian withholding tax (other than net income taxes, gross receipts taxes [except gross receipts taxes in the nature of or in lieu of sales, use or rental taxes], franchise taxes measured by net income based upon such receipts, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Vendee assumes and agrees to pay on demand. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the security interest of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith (after written notice to the Vendor) and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, materially adversely affect the title,

property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved the payment thereof.

ARTICLE 7. Maintenance; Casualty Occurrences; Insurance. The Vendee shall, at its own cost and expense, maintain and keep each unit of the Equipment in good order, repair and condition.

In the event that (i) any Unit shall be or become worn out, lost, stolen, destroyed, or, in the reasonable opinion of the Lessee irreparably damaged, from any cause whatsoever; or (ii) as a result of a change subsequent to July 15, 1984, in any law or rules referred to in Article 10, it would be economically impractical in the reasonable opinion of the Lessee to conform thereto with respect to the Units, such Units shall be deemed to have suffered a Casualty Occurrence and the Vendee shall promptly and fully notify the Vendor with respect thereto. In the event that any unit shall be taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 180 consecutive days, such unit shall be deemed to have suffered a Casualty Occurrence on the one hundred and eightieth day of said period provided that either the Lessee or the Vendee shall have given written notice within 30 days following said one hundred and eightieth day to the other and to the Investor that it deems such unit to have suffered a Casualty Occurrence. On the next succeeding July 15 for the payment of interest on the Conditional Sale Indebtedness or in the event that the notice contemplated by the next preceding sentence is not given prior to July 15 in the calendar year in which such notice is given, then on the July 15 for the payment of interest on the Conditional Sale Indebtedness next succeeding the date on which such notice is given (each such date being hereinafter called a Casualty Payment Date), the Vendee shall pay to the Vendor in immediately available funds a sum equal to the Casualty Value (as hereinafter defined in this Article) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of the interest and principal due on such date) to prepay without penalty or premium, ratably in accordance with

the unpaid balance of each instalment, the Conditional Sale Indebtedness and the Vendee will promptly furnish to the Vendor a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor may request.

Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee of all the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit), plus interest accrued on such portion but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of the Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

If the Vendor shall receive any insurance proceeds or condemnation or other similar payments in respect of units suffering a Casualty Occurrence (including, without limitation, any payments made by the handling railroad or any other third party which may be required to pay all or a portion of any loss arising from such Casualty Occurrence), the Vendor shall, after receipt of payments from the Vendee in respect of the Casualty Value thereof, pay such insurance proceeds or condemnation or other similar payments to the Vendee. All insurance proceeds or condemnation or other similar payments received by the Vendor in respect of any unit or units of Equipment not suffering a Casualty Occurrence

shall be paid to the Vendee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

ARTICLE 8. Reports and Inspections. On or before January 15 in each year, commencing with the year 1977, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding October 30 the amount, description and numbers of all units of Equipment then subject to this Agreement, the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding twelve months (or since the date of this Agreement in the case of the first such statement) and setting forth such information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 9 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Vendee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 9. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered with the road numbers set forth in Annex B hereto, or, in the case of Equipment not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement Recorded under the Interstate Commerce Act, Section 20c", with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings that may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement shall promptly be filed with the

Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited. The Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates and may also be lettered, in the case of a sublease by the Lessee, in such manner as may be appropriate for convenience of identification of the subleasehold interest therein.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership.

ARTICLE 10. Compliance with Laws and Rules. During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or modification of or to any part on any unit of the Equipment, the Vendee will conform therewith at its own expense; provided, however, that the Vendee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, materially adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Possession and Use. The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Vendee simultaneously herewith is leasing the

Equipment to the Lessee for use as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

The Vendee may also lease the Equipment to any railroad company, but only with the prior written consent of the Vendor, which consent may be subject to the conditions, among others, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement, (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America and the Dominion of Canada and (iii) such lease shall be assigned to the Vendor as security on terms consistent with those set forth in Annex D hereto, and in any event satisfactory to the Vendor.

ARTICLE 12. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or the Beneficiaries or their successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Vendee's interests in the Lease and the payments to be made thereunder, equal or superior to the Vendor's security interest therein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, materially adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of busi-

ness and, in each case, not delinquent.

The foregoing provisions of this Article 12 shall be subject to the limitations set forth in the last paragraph of Article 4 hereof and the provisions of Article 22 hereof; provided, however, that the Vendee will pay or discharge any and all liens, charges or security interests claimed by any party from, through or under the Vendee or its successors or assigns, not arising out of the transactions contemplated hereby or by the Lease (but including tax liens arising out of the receipt of the income and proceeds from the Equipment), which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Vendee's interests in the Lease and the payments to be made thereunder, equal or superior to the Vendor's security interest therein, but the Vendee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in and to the Lease and the payments to be made thereunder.

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of title to or a security interest in the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full

payment of the indebtedness in respect of the Purchase Price of, and the release of the security interest in, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The Builder represents and warrants to the Vendee that, at the time of delivery and acceptance of each unit of the Equipment under this Agreement, the Vendee will have good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor under this Agreement and the rights of the Lessee under the Lease.

The agreement of the parties relating to the Builder's warranty of material and workmanship and the agreement of the parties relating to patent indemnification are set forth in Items 3 and 4 of Annex A hereto.

ARTICLE 14. Assignments. The Vendee will not except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 13 hereof, or relieve the Vendee of its obligations to the Builder contained in Articles 2, 3, 4, 6, and 13 hereof, Annex A hereto and this Article 15, or any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Vendee recognizes that this Agreement will be assigned to the Assignee as provided in the Assignment. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee, as the case may be, against and only against the Builder.

ARTICLE 15. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 22 hereof or any other provision of this Agreement limiting the liability of the Vendee) and such default shall continue for ten days; or

(b) the Vendee (irrespective of the provisions of Article 4 or 22 hereof or any other provision of this Agreement limiting the liability of the Vendee) shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a proceeding shall be commenced by or against the Vendee for any relief which includes, or might result in, any modification of the obligations of the Vendee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Vendee under this Agreement), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Vendee under this Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(d) the Vendee shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment; or

(e) an Event of Default as defined in the Lease shall occur;

then at any time after the occurrence of such an event of

default the Vendor may, upon written notice to the Vendee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) cause the term of the Lease immediately upon such notice to terminate, but without affecting the indemnities which by the provisions of the Lease survive the termination of its term, and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of the property of the Vendee, subject to the provisions of Articles 4 and 22 hereof. The Vendee shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 16. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, and in compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee any sums thereto-

fore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from the possession and use of the Vendee, the Lessee or any other person and for such purpose may enter upon the premises of the Vendee or the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee or the Lessee, subject to all mandatory requirements of due process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, causing prompt telegraphic and written notice to be given to the Association of American Railroads and all railroads to which any unit or units of the Equipment have been interchanged or any other user thereof to return the unit or units so interchanged) cause the Equipment to be placed upon such storage tracks of the Lessee as the Vendor reasonably may designate;

(b) permit the Vendor to store the Equipment on such tracks at the risk of the Vendee without charge for rent or storage until the Equipment has been sold, leased or otherwise disposed of by the Vendor; and

(c) cause the Equipment to be transported to any connecting carrier for shipment, all as directed by the Vendor.

During any storage period, the Vendee will, at its own cost and expense, insure, maintain and keep each such unit in good order and repair and will permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly

waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire Conditional Sale Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided, further, that if the Vendee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the

Vendee, and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, or any other party claiming from, through or under the Vendee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fee and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor and the Vendee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Vendee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the right of the Vendee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better

price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Vendee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of the last paragraph of Article 4 hereof, be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee.

The Vendee will pay all reasonable expenses,

including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. Recording. The Vendee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act and, at such time as any of the Equipment may be located in any Province of the Dominion of Canada (other than Quebec), to be filed and recorded in each such Province wherein such filing and recording is necessary for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will from time to time do and perform any other act and will execute, acknowledge,

deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor. Notwithstanding the foregoing, the Vendee shall not be required to take any such action (i) in the Province of Quebec or (ii) (other than filing and recording under Section 20c of the Interstate Commerce Act) so long as (a) no units of the Equipment are removed from the United States to any place other than the Province of Quebec or (b) if, after giving effect to the failure to take such action, all action required by law (other than action required in the Province of Quebec) has been taken so as to protect the security interest of the Vendor to units of Equipment having a Purchase Price of not less than 90% of the aggregate Purchase Price of all the then existing units of Equipment.

ARTICLE 19. Payment of Expenses. The Vendee will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of this Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment.

ARTICLE 20. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Except for the Participation Agreement, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Vendee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor

and the Vendee.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it by first class mail, postage prepaid, at its chief place of business at the following specified addresses:

(a) to the Vendee, at One Tower Square, Hartford, Connecticut 06115, Attention of Securities Department--Private Placement Division, with copies to ITEL Leasing Corporation, One Embarcadero Center, San Francisco, California 94111, Attention of Contract Administration,

(b) to the Builder, at the address specified in Item 1 of Annex A hereto,

(c) to any assignee of the Vendor, or of the Vendee, at such address as may have been furnished in writing to the Vendee, or the Vendor, as the case may be, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Immunities; Satisfaction of Undertakings. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers as such, being forever released as a condition of and as consideration for the execution of this Agreement. The obligations of the Vendee under the second and penultimate paragraphs of Article 16 and under Articles 3, 6, 7 (other than the second and third sentences of the second paragraph thereof), 8, 9, 10, 12 (other than the proviso to the last paragraph thereof), 13 and 18 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute

the basis for an event of default hereunder pursuant to Article 15 hereof. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

ARTICLE 23. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Connecticut; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee pursuant to the Assignment shall be deemed the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Agreement is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

ARTICLE 25. ERISA Representation. The Builder represents that it is not entering into the Conditional Sale Agreement, or into any other transaction contemplated by the Participation Agreement, directly or indirectly in connection with any arrangement or understanding in any way involving any employee benefit plan (other than a governmental plan) with respect to which it, the Vendee or the Lessee is a party in interest, all within the meaning of the Employee Income Security Retirement Act of 1974.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

PACCAR INC

by

[CORPORATE SEAL]

Attest:

F. D. Sullivan  
Asst. Secretary

[Signature]  
Vice President

## THE TRAVELERS INSURANCE COMPANY

by

Walter P. Jennings, Jr.

Title:

First Investment Officer

[CORPORATE SEAL]

Attest:

Walter P. Cripe

Assistant Secretary

STATE OF WASHINGTON, )  
 ) SS.:  
COUNTY OF KING, )

On this 3<sup>rd</sup> day of April 1976, before me personally appeared J. J. Jolley, to me personally known, who, being by me duly sworn, says that he is Vice President of PACCAR INC, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF CONNECTICUT, )  
 ) ss.:  
COUNTY OF HARTFORD, )

On this *6th* day of April 1976, before me personally appeared *Mr. J. J. J. J.*, to me personally known who, being by me duly sworn, says that he is *Agent* of THE TRAVELERS INSURANCE COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said company, that said instrument was signed and sealed on behalf of said company by authority of the Finance Committee of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said company.

*Art. P. C.*  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires *3-31-77*

# SCHEDULE I

## Conditional Sale Agreement

Allocation Schedule  
on Each \$1,000,000 Unit  
of Conditional Sale Indebtedness

<u>Payment Number</u>	<u>Interest Payment</u>	<u>Allocated to Principal</u>	<u>Total Payment</u>	<u>Payment Date</u>
1	\$ 47500	\$ 16374	\$ 63874.40	1/77
2	46722	17152	63874.40	7/77
3	45907	17967	63874.40	1/78
4	45054	18820	63874.40	7/78
5	44160	19714	63874.40	1/79
6	43224	20651	63874.40	7/79
7	42243	21632	63874.40	1/80
8	41215	22659	63874.40	7/80
9	40139	23735	63874.40	1/81
10	39011	24863	63874.40	7/81
11	37831	26044	63874.40	1/82
12	36593	27281	63874.40	7/82
13	35298	28577	63874.40	1/83
14	33940	29934	63874.40	7/83
15	32518	31356	63874.40	1/84
16	31029	32846	63874.40	7/84
17	29469	32742	62210.91	1/85
18	27913	34297	62210.91	7/85
19	26284	30119	56403.07	1/86
20	24854	31549	56403.07	7/86
21	23355	27365	50720.49	1/87
22	22055	28665	50720.49	7/87
23	20694	24476	45169.35	1/88
24	19531	25638	45169.35	7/88
25	18313	23565	41878.51	1/89
26	17194	24685	41878.51	7/89
27	16021	24732	40753.52	1/90
28	14847	25907	40753.52	7/90
29	13616	25957	39572.82	1/91
30	12383	27190	39572.82	7/91
31	11092	27242	38333.66	1/92
32	9798	28536	38333.66	7/92
33	8442	28591	37033.13	1/93
34	7084	29949	37033.13	7/93
35	5661	58213	63874.40	1/94
36	2896	60978	63874.40	7/94
	\$973887	\$1000003	\$1973889.75	

Annex A

to

Conditional Sale Agreement

- Item 1: PACCAR Inc, 1400 North 4th Street, Renton, Washington 98055. (A copy of all notices should be delivered or mailed to the attention of General Counsel, P. O. Box 1518, Bellevue, Washington 98009.)
- Item 2: The Equipment shall be settled for in not more than two Groups of units of the Equipment delivered to and accepted by the Vendee unless a greater number shall be agreed to by the parties hereto.
- Item 3: The Builder warrants that the Equipment will be built in accordance with, the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Annex A is attached (hereinafter called this Agreement) and, except in cases of articles and materials specified by the Lessee or Procor Limited and not manufactured by the Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service, the liability of the Builder under this warranty being limited, as the Lessee may elect: (i) to repair of the defects at the Builder's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. The Builder shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of the Builder shall begin at the time of delivery of a unit of the Equipment to the Vendee and terminate two years after such delivery. THE BUILDER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Vendee's rights under the foregoing warranty shall be its sole and exclusive remedy and the Builder will have no liability for lost profit or for indirect, incidental, consequential or com-

mercial losses. This warranty is expressly in lieu of all other warranties expressed or implied on the part of the Builder, and the Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment, except for the patent indemnification included in Item 4 of this Annex A.

The Builder further agrees with the Vendee that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Vendee of any of its rights under this Item 3.

The Vendee agrees with the Builder that, so long as there has been no termination of the Lease or event of default thereunder, the obligations of the Builder to the Vendee under the foregoing warranty shall be deemed satisfied if the performance of said obligations by the Builder is satisfactory to the Lessee.

- Item 4: Except in cases of articles or materials specified by the Lessee or Procor Limited and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee or Procor Limited and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Vendee and, as third party beneficiary hereof, the Lessee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee, the Lessee, its or their assigns or the users of the Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. Pursuant to the Lease, the Lessee likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed

upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee or Procor Limited and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee or Procor Limited and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Lessee every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Lessee or Procor Limited and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Lessee or the Vendee or the users of the Equipment all and every such further assurance as may be reasonably requested by the Lessee or the Vendee more fully to effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give notice to the Lessee of any claim known to the Builder from which liability may be charged against the Lessee under the Lease and the Vendee will give notice to the Builder of any claim known to the Vendee from which liability may be charged against the Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

- Item 5: The Maximum Purchase Price referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is \$5,577,206.
- Item 6: The Maximum Conditional Sale Indebtedness referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is \$3,977,206.

Annex B

to

Conditional Sale Agreement

<u>Type and AAR Mechanical Designation</u>	<u>Builder's Specifi- cations</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Road Numbers</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
52'6" 70-ton single sheath boxcar AAR Mechanical Designa- tion, XM or XP	PC 384 dated June 25, 1974, as amended	Renton, Washington	175	CPAA 207500 through and including 207614 and CPAA 208000 through and including 208059	\$31,014	\$5,427,450	Renton, Washington, April 1976

Annex C  
to Conditional Sale Agreement

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LEASE OF RAILROAD EQUIPMENT

Dated as of December 1, 1975

between

UNION TANK CAR COMPANY

and

THE TRAVELERS INSURANCE COMPANY

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LEASE OF RAILROAD EQUIPMENT dated as of December 1, 1975, between UNION TANK CAR COMPANY, a Delaware corporation (hereinafter called the Lessee), and THE TRAVELERS INSURANCE COMPANY (hereinafter called the Lessor).

WHEREAS the Lessor is entering into a conditional sale agreement dated as of the date hereof with Paccar Inc, (such corporation being hereinafter called the Builder and such agreement being hereinafter called the Security Documentation), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (hereinafter called the Equipment);

WHEREAS the Builder is assigning its interest in the Security Documentation to First Security Bank of Utah, N.A., as agent under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement) with the Lessor, the Lessee, and The Travelers Indemnity Company (hereinafter called the Investor) (said bank, as so acting, being hereinafter, together with its successors and assigns, called the Vendor); and

WHEREAS the Lessee desires to lease such number of units of the Equipment as are delivered and accepted and settled for under the Security Documentation (hereinafter called the Units) at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor, the Builder or the Vendor; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect

in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Security Documentation. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Security Documentation. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the provisions of Article 3 of the Security Documentation, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the Security

Documentation pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, 37 consecutive semiannual payments payable on January 15 and July 15 in each year, commencing July 15, 1976. The rental payment payable on July 15, 1976, shall be in an amount equal to .026389% of the Purchase Price (as defined in the Security Documentation) of each Unit subject to this Lease for each day elapsed from the Closing Date (as defined in the Security Documentation) for such Unit to and including the date of such payment. The next 36 rental payments shall each be in an amount equal to 4.555% of the Purchase Price of each Unit then subject to this Lease. In addition, as additional rental hereunder, the Lessee agrees to pay to the Lessor on the Cut-Off Date (as defined in the Participation Agreement) and on July 15, 1976, respectively, amounts equal to the amounts required to be paid by the Lessor pursuant to the last paragraph of Paragraph 7 of the Participation Agreement.

In the event that there are any losses, liabilities or expenses arising out of or resulting from the Investments made pursuant to Paragraph 2 of the Participation Agreement, including, but not limited to, any deficiency in respect thereof, rentals thereafter payable by the Lessee in respect of Units settled for after such loss, liabilities, expenses or deficiencies arose shall be increased by such amount as shall, in the reasonable opinion of the Lessor, cause the Lessor's net return (computed on the same assumptions as were utilized by the Lessor in originally evaluating this transaction) to equal the net return that would have been realized by the Lessor if such loss, liability or expense had not occurred.

The rental payments hereinbefore set forth are subject to adjustment pursuant to § 16 hereof. If any of the rental payment dates referred to above is not a business day the rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York; Salt Lake City, Utah; or Chicago, Illinois, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make, and the Lessee agrees to make, all the payments provided for in this Lease for the account of the Lessor in immediately available Salt Lake City or Federal funds in care of the Vendor, at 79 South Main Street, Salt Lake City, Utah 84111, attention of Trust Department, Corporate Division, on or before 11:00 a.m., Salt Lake City time, on the date upon which such payments are due and payable. Such payments shall be accompanied by instructions to the Vendor, first, to apply such payments to satisfy the obligations of the Lessor under the Security Documentation, subject to the limitations contained in the last paragraph of Article 4 of the Security Documentation, and, second, so long as no event of default or event which with the lapse of time and/ or demand provided for in the Security Documentation could constitute an event of default under the Security Documentation shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in immediately available funds in the city where such payment is to be made.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the Security Documentation. If an event of default should occur under the Security Documentation, the Vendor may terminate this Lease (or rescind its termination), all as provided therein.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the road number set forth in Schedule A hereto, or in the case of any Unit not there listed such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement Recorded under the Interstate Commerce Act, Section 20c", with appropriate changes

thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and property in such Unit, the rights of the Lessor under this Lease and the rights of the Vendor under the Security Documentation. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words that may be removed, defaced or destroyed. In the event of a change in the road number of any Unit, the Lessee will promptly (i) file a statement containing the new number or numbers being substituted with the Vendor and the Lessor and file, record and deposit such statement in all public offices where this Lease and the Security Documentation shall have been filed, recorded and deposited and (ii) furnish the Vendor and the Lessor an opinion of counsel to that effect and to the further effect that no further filing, recording or deposit (or giving of notice) with any other Federal, state or local government or agency thereof is necessary in order to protect the interests of the Vendor or the Lessor in and to the Units in the United States of America or the Dominion of Canada (other than the Province of Quebec). The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates and may also be lettered, in the case of a sublease by the Lessee, in such manner as may be appropriate for convenience of identification of the subleasehold interest therein.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal or foreign taxes including any Canadian withholding tax (other than any United States federal income tax payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes based on such receipts which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the

payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Documentation, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of the ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, materially adversely affect the title, property or rights of the Lessor hereunder or the Vendor under the Security Documentation. The Lessee agrees to give the Lessor notice of such contest within 30 days after institution thereof. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor; provided, however, that the Lessee shall not be obligated to reimburse the Lessor for any imposition so paid unless the Lessor shall have given the Lessee 30 days written notice prior to payment and shall have given the Lessee the opportunity to contest such imposition, provided that any such contest shall be in good faith and by appropriate legal proceedings and the nonpayment of such imposition shall not, in the opinion of the Lessor or the Vendor, materially adversely affect the property or rights of the Lessor or the Vendor under this Lease or the Security Documentation.

In the event that any Canadian withholding tax is imposed upon the interest paid upon the Conditional Sale Indebtedness, the Lessee shall pay to the Lessor the amount of such tax.

In the event that the Lessor shall become obligated

to make any payment to the Builder or the Vendor or otherwise pursuant to any correlative provision of the Security Documentation not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interest of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor; provided, however, that the Lessor shall provide such information and assistance as may be appropriate in the circumstances.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Lessor hereby authorizes the Lessee to act in its own name and on its behalf; provided, however, that the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action or failure to act by the Lessee pursuant to this authorization.

The Lessee shall, whenever requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

§ 7. Maintenance; Casualty Occurrences; Insurance. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good operating order, repair and condition.

In the event that (i) any Unit at any time during the term of this lease shall be or become worn out, lost, stolen, destroyed, or, in the reasonable opinion of the Lessee irreparably damaged, from any cause whatsoever; or (ii) as a result of a change subsequent to July 15, 1984, in any law or rules referred to in the second paragraph of § 9 hereof, it would be economically impractical in the reasonable opinion of the Lessee to conform thereto with respect to the Units, prior to the return of such Unit in the manner set forth in § 14 hereof, such Units shall be deemed to have suffered a Casualty Occurrence and the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. In the event that any unit shall be taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 180 consecutive days, such unit shall be deemed to have suffered a Casualty Occurrence on the one hundred and eightieth day of said period provided that either the Lessee or the Lessor shall have given written notice within 30 days following said one hundred and eightieth day to the other and to the Investor that it deems such unit to have suffered a Casualty Occurrence. On the July 15 next succeeding a Casualty Occurrence or in the event that the notice contemplated by the next preceding sentence is not given prior to July 15 in the calendar year in which such notice is given, then on the July 15 next succeeding the date on which such notice is given, the Lessee shall pay to the Lessor a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below which sum includes and is in lieu of the rental payment or payments in respect of such Unit which would otherwise be due and payable on such date. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis; provided, however, it is understood and agreed that neither the Lessee nor any person controlling, controlled by or under common control with it may purchase any Units suffering a Casualty Occurrence pursuant to clause (ii) above. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall be entitled to receive from the Lessor one half of any balance of such proceeds in the event that such receipt shall be permitted

(a) under the ruling policies of the Internal Revenue Service if a ruling is requested by the Lessor or (b) without such receipt resulting in the Lessee having to pay additional rental under Section 16 hereof on the basis of treatment established by (i) any private ruling letter issued to the Lessee by the Internal Revenue Service that has not been revoked or otherwise rendered inapplicable at the time of such receipt by the Lessee; (ii) any provision of the Code (as defined in Section 16(a) hereof) or the applicable regulations thereunder; or (iii) any published revenue ruling of the Internal Revenue Service which has not been held invalid.

Subject to adjustment pursuant to the provisions of § 16 hereof, the Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite such date:

<u>Date</u>	<u>Percentage of Purchase Price</u>
July 15, 1976	95.3398
July 15, 1977	89.0965
July 15, 1978	90.4161
July 15, 1979	90.6763
July 15, 1980	89.9444
July 15, 1981	88.2865
July 15, 1982	85.7818
July 15, 1983	82.5243
July 15, 1984	78.6253
July 15, 1985	74.2099
July 15, 1986	69.3819
July 15, 1987	64.1894
July 15, 1988	58.6768
July 15, 1989	52.8872
July 15, 1990	46.8418
July 15, 1991	40.5369
July 15, 1992	33.9641
July 15, 1993	27.1151
July 15, 1994, and thereafter	20.0000

The foregoing percentages have been computed without regard to recapture of the Investment Credit (as defined in § 16 hereof). Consequently, the Casualty Value of any Unit suffering a Casualty Occurrence on or before the third, fifth or seventh anniversary of the date of delivery and

acceptance of such Unit shall be increased by the applicable percentage of the Purchase Price set forth below:

<u>Anniversary of Delivery and Acceptance</u>	<u>Percentage of Purchase Price</u>
Third	19.2308
Fifth	12.8205
Seventh	6.4103

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and promptly pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 20% of the Purchase Price of such Unit.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Equipment to the Lessor, at its own expense, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies in respect of similar equipment and, in any event, comparable in amounts and against risks insured against by the Lessee in respect of similar equipment owned by it; provided, however, that the Lessee shall not at any time be required to maintain property insurance with respect to any Unit in an amount greater than the Casualty Value from time to time applicable to such Unit. The benefits thereof shall be payable to the Vendor, the Lessor and the Lessee, as their interests may appear, so long as the indebtedness, if any, evidenced by the Security Documentation shall not have been paid in full, and thereafter to the Lessor and the Lessee as their interests may appear. If the Lessor shall receive any net insurance proceeds as the result of insurance carried by the Lessee or any condemnation or other

similar payments in respect of Units suffering a Casualty Occurrence (including, without limitation, any payments made by the handling railroad or any other third party which may be required to pay all or a portion of any loss arising from such Casualty Occurrence), the Lessor shall, subject to the Lessee having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation or other similar payments to the Lessee up to an amount equal to the Casualty Value with respect to such Units paid by the Lessee and any balance of such proceeds or condemnation or other similar payments shall remain the property of the Lessor; provided, however, that the Lessee shall be entitled to receive from the Lessor one half of any balance of such proceeds or condemnation or other similar payments in the event that such receipt shall be permitted (a) under the ruling policies of the Internal Revenue Service if a ruling is requested by the Lessor or (b) without such receipt resulting in the Lessee having to pay additional rental under § 16 hereof on the basis of treatment established by (i) any private ruling letter issued to the Lessee by the Internal Revenue Service that has not been revoked or otherwise rendered inapplicable at the time of such receipt by the Lessee (ii) any provision of the Code (as defined in § 16(a) hereof) or the applicable regulations thereunder; or (iii) any published revenue ruling of the Internal Revenue Service which has not been held invalid by a court having ultimate appellate jurisdiction over the Federal income tax liability of the Lessee. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which proceeds were paid has been fully repaired.

§ 8. Reports. On or before January 15 in each year, commencing with the calendar year 1977, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding October 30 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documentation, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding twelve months (or since the date of this Lease in the case of the first such statement) and such information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings

required by § 5 hereof and by the Security Documentation have been preserved or replaced and (c) stating that the Lessee has complied in all material respects with the requirements of the first paragraph of § 7. The Lessor and the Vendor shall have the right, by their respective agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

The Lessee will furnish to the Lessor, the Vendor, and the Investor (i) within 120 days after the close of the fiscal year of the Lessee, a certificate of the Lessee, signed by a principal financial officer, to the effect that the signer has reviewed the relevant terms of this Lease, the Participation Agreement and the Security Documentation and has made, or caused to be made under his supervision, a review of the transactions and condition of the Lessee during the preceding fiscal year, and that such review has not disclosed the existence during such period, nor does the signer have knowledge of the existence, as at the date of such certificate, of any condition or event which constitutes a default, an Event of Default or event of default or which, after notice or lapse of time or both, would constitute such a default, an Event of Default or event of default or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action the Lessee has taken or is taking or proposes to take with respect thereto, (ii) as soon as practicable after the filing of the same, all quarterly and annual reports of the Lessee required to be filed under the Securities Exchange Act of 1934, and (iii) from time to time such other information as the Lessor may reasonably request. The Lessee will furnish the Lessor from time to time on request such information as the Lessee or the Lessor may be required to furnish to any person pursuant to the Security Documentation.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks,

as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A of the Security Documentation; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation, or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does

not, in the opinion of the Lessor or the Vendor, materially adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documentation. The Lessee, at its own cost and expense, may furnish additions, modifications and improvements to the Units during the term of this Lease provided that such additions, modifications and improvements are readily removable, without causing material damage to the Units. The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee and the Lessor may require the Lessee to remove such additions, modifications or improvements from the Units at the end of original term or if the original term is extended, at the end of such extended term.

Except as otherwise provided in the next preceding paragraph, any and all additions to any Unit and any and all parts installed on and additions and replacements made to any Unit shall constitute accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Security Documentation) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, including without limitation strict or absolute liability in tort or by statute imposed and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default by the Lessee under the Participation Agreement or an event of default or an Event of Default under the Security Documentation or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease, or the transfer of title to the Equipment by the Vendor pursuant to any provision of the Security Documentation. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations

under this Lease or the expiration or termination of the term of this Lease.

The Lessee further agrees to indemnify, protect and hold harmless the Vendor and the Builder as third party beneficiaries hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor or the Builder because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee or Procor Limited and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee or Procor Limited and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee from which liability may be charged against the Builder hereunder.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any amount provided for in § 3, 7 or 13 hereof, and such default shall continue for ten days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements contained herein, in the Consent (as defined in the Participation Agreement) or in the Participation

Agreement by the Lessee, and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied; or

D. any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Consent, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Consent), and unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and under the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(i) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of Federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(ii) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided;

and thereupon the Lessor, subject to the applicable provisions of law, may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purpose whatever and without any duty to account to the Lessee with respect to such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify in such notice of termination: (x) a sum equal to (A) the excess, if any, of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Units which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Units over the then present value of the rental which the Lessor reasonably estimates to be obtainable for such Units during such period, such present value to be computed in each case on the basis of a 5.93% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, plus (B) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of all amounts payable by the Lessee to the Lessor hereunder, under the laws of any Federal, state or local government or taxing authority of the United States of America or under the laws of any taxing authority or governmental subdivision of a foreign country, shall, in the reasonable opinion of the Lessor, be equal to all or such portion of the Investment Credit (as defined in § 16 hereof) lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a direct or indirect result of the breach of one or more of the representations, war-

warranties and covenants made by the Lessee in § 16 or any other provision of this Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default, plus such sum as shall, in the reasonable opinion of the Lessor, cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if the Lessor had been entitled to utilization of all or such portion of the ADR Deduction and the Interest Deduction (as such deductions are defined in § 16 hereof) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of the Units as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 16 or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessee or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default plus such sum as will pay or reimburse the Lessor for any interest, penalties or additions to tax incurred in connection with such loss, failure to claim, inability to claim, disallowance or recapture; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this subparagraph (ii) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination, over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys'

fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. Return of Units upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or any other user thereof to return the Unit or Units) place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for

insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

All amounts earned in respect of the Units after the date of termination of this Lease, whether by reason of the exercise of a remedy upon an Event of Default or otherwise, shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, or any Unit is not delivered to the Lessor within 60 days of such termination as provided in § 14, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the per diem interchange rate for such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease

shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 9, 10 and 16 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns.

So long as the Lessee shall not be in default under this Lease and no event of default exists under the Security Documentation, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease but, without the prior written consent of the Lessor and the Vendor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, charge, security interest or other encumbrance which arises; provided, however, that the Lessee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Lessor or the Vendor, materially adversely affect the property or rights of the Lessor or the Vendor under this Lease or the Security Documentation. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease and no event of default exists under the Security Documentation, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate and the Lessee may also (a) furnish the Units or any thereof to railroad companies for use upon the lines of railroad owned or operated by them or over which they have trackage rights and upon connecting and other carriers in the usual interchange of traffic, or to others than railroad companies

for use in their business, or (b) sublet all or any of the Units, but only, in either case, upon and subject to all the terms and conditions of this Lease, and to all rights and remedies of the Vendor under the Security Documentation; provided, however, that the Lessee shall not use or permit the use of any Units in service involving the regular operation and maintenance thereof outside the United States of America or the Dominion of Canada. The Lessee may receive and retain compensation for such use from others so using any of the Units. The Lessee represents and warrants to the Lessor and the Vendor that the Units will be used, and are intended for use, in connection with interstate commerce.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

### § 13. Renewal Option; Right of First Refusal.

The Lessor intends to retain the Units for release at the expiration of the term of this Lease. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease elect to extend the term of this Lease in respect of all, but not fewer than all, of the Units then covered by this Lease for one additional two-year period commencing on the scheduled expiration of the original term of this Lease, at an annual rental equal to 50% of the annual rental payable with respect to such Units pursuant to § 3 of the Lease, payable in arrears in two semiannual payments on January 15 and July 15 in each year of the extended term. During and at the termination of such extended term the Lessee shall not be required to comply with the provisions of the second paragraph of § 9 hereof or clause (ii) of § 14 hereof, and the term Casualty Occurrence with respect to any Unit shall not include any event arising

from it being economically impractical for the Lessee to conform to any change of law or rules referred to in said paragraph.

The Lessor agrees that (provided no default hereunder shall have occurred and be continuing) it will not sell the Units, or any of them, unless the Lessor shall have given the Lessee at least 30 business days' prior written notice of such sale, specifying the sale price and terms of such sale, and the Lessee shall have had the opportunity to purchase such Unit or Units at the same price and on the same terms as specified in such notice. Such opportunity of the Lessee shall continue for a period of 20 business days, commencing on the date it receives such notice from the Lessor. Upon payment of the purchase price of any Unit, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for each Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Builder, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

§ 14. Return of Units upon Expiration of Term.  
As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee or any of its affiliates as the Lessor may reasonably designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period ending the later of (a) 30 days following the delivery of such Unit to the Lessor or (b) 30 days following the delivery to the Lessor of substantially all of the Units required to be delivered pursuant to this Section 14 ("substantially all" meaning for this purpose not less than 90% of such Units) and transport the same at any time within such period to any carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee; provided, however, that the expense of transporting such Units to be paid by the Lessee shall not be in excess of the expense of transporting such Units from their location at the expiration of the Lease to Chicago, Illinois. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative

or representatives of any prospective purchaser of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, and (ii), except as provided in § 13 hereof, meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the Security Documentation and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and, at such time as any of the Units may be located in any Province of the Dominion of Canada (other than Quebec), to be filed and recorded in each such Province wherein such filing and recording is necessary for the purpose of proper protection, to the satisfaction of the Lessor and the Vendor, of the Vendor's and Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documentation and the assignment hereof and thereof to the Vendor. The Lessee will undertake the filing, registering, deposit and recording required of the Lessor under the Security Documentation and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documentation and the

assignment hereof and thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. Notwithstanding the foregoing, the Lessee shall not be required to take any such action (i) in the Province of Quebec or (ii) (other than filing and recording under Section 20c of the Interstate Commerce Act) so long as (a) no Units are removed from the United States to any place other than the Province of Quebec or (b) if, after giving effect to the failure to take such action, all action required by law (other than actions required in the Province of Quebec) has been taken so as to protect the Vendor's and the Lessor's respective interests in Units having a Purchase Price of not less than 90% of the aggregate Purchase Price of all the then existing Units. This Lease and the Security Documentation shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 16. (a) Federal Income Taxes. It is the intent of the parties to this Lease that it will be a true lease for all Federal, state, city and local income taxes or for franchise taxes measured by net income, and that this Lease does not convey to the Lessee any right, title or interest in the Units except as lessee and that, for United States income tax purposes (and to the extent applicable for state and local tax purposes), the Lessor shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property used in such owner's trade or business, including, without limitation, (i) the maximum depreciation deduction with respect to the Units authorized under Sections 167 and 804(c)(3) of the Code based on the aggregate Purchase Price of the Units utilizing the 12-year depreciable life prescribed for the Units in the Asset Guideline Class No. 00.25, as described in Revenue Procedure 72-10, I.R.B. 1972-8, in accordance with Section 167(m) of the Code, employing the double declining method of depreciation switching to the sum-of-the-years digits method when most beneficial to the Lessor, utilizing the modified half-year convention as provided in Reg. 1.167(a)-11(c)(2)(ii) and taking into account an estimated gross salvage value of 10% of the Purchase Price of the Units which will be reduced by 10% of the Purchase Price as provided in Section 167(f) of the Code (such deduction being

herein called the ADR Deduction), (ii) deductions with respect to interest payable under the Security Documentation pursuant to Sections 163, 805(e)(1) and 809(d)(12) of the Code (such deductions being herein called the Interest Deduction), and (iii) the 10% investment credit in 1976 (herein called the Investment Credit) with respect to the Purchase Price of the Units pursuant to Section 38 and related sections of the Code for "new section 38 property".

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing or which would increase the amount of rentals required to be taken into income by the Lessor over the amount specified to be payable under this Lease on the dates due hereunder and that each of such corporations will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. The Lessee agrees to keep and make available for inspection and copying by the Lessor such records as will enable the Lessor to determine the extent to which it is entitled to the benefit of the Investment Credit, the ADR Deduction and the Interest Deduction with respect to the Units.

The Lessee represents and warrants that (A) all the Units constitute property the full Purchase Price of which qualifies for the Investment Credit under Section 50 of the Code; (B) at the time the Lessor becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of Section 48(b) of the Code and at the time the Lessor becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Section 48(b) and 167(c)(2) of the Code from commencing with the Lessor; (C) at all times during the term of this Lease, each Unit will constitute "section 38 property" within the meaning of Section 48(a) of the Code, and the Lessee will not at any time during the term of this Lease use or fail to use any Unit in such a way as to disqualify it as "section 38 property", including use of the Units predominantly outside the United States, within the meaning of Section 48(a) of the Code; (D) the Lessee will maintain sufficient records to verify such use; (E) upon request of the Lessor, the Lessee will provide written reports establishing such use; (F) the residual value of the

Equipment at the expiration of the original term of the Lease and any renewal pursuant to Section 13 of the Lease will be at least 20% of the original cost of the Equipment (after subtracting from such value any cost to the Lessor for delivery of possession of the Equipment to the Lessor at the end of the original or extended term of the Lease and without including in such value any increase or decrease for inflation or deflation during the original or extended term); (G) the remaining useful life of the Equipment at the end of the original term and any extended term will be at least five years.

With respect to any Unit, if (i) for any reason (other than the reasons set forth below) prior to the receipt by the Lessor of a favorable ruling (herein called the Ruling) from the Internal Revenue Service to the effect that the Lessor is the owner of the Units and has the right to claim the Investment Credit, the ADR Deduction (without regard for the applicable gross salvage value), and the Interest Deduction, or (ii) after the receipt by the Lessor of the Ruling as a direct or indirect result of the inaccuracy in law or in fact of the representations and warranties set forth in the preceding paragraph or any act or omission of the Lessee (including, but not limited to, the failure of the Lessee to furnish the notices to the lessor contemplated by the last paragraph of subsection (b) of this § 16 or any inaccuracy in such notice) or the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee in connection with the application for the Ruling, the Lessor shall lose or shall not have or shall lose the right to claim, or there shall be disallowed or recaptured with respect to the Lessor, all or any portion of the Investment Credit, the Interest Deduction or the ADR Deduction with respect to a Unit in computing taxable income under one of the accelerated methods of depreciation provided in Section 167(b) of the Code for the period this Lease is in effect, then, after written notice thereof to the Lessee by the Lessor, the rental rates applicable to such Unit set forth in § 3 hereof shall be increased by an amount for such Unit which, in the reasonable opinion of the Lessor, will cause the Lessor's net after tax return in respect of such Unit under this Lease (calculated on the same basis as used by the Lessor in originally evaluating this transaction) to equal the net after tax return that would have been available if the Lessor had been entitled to utilization of all or such portion of the Investment Credit, Interest Deduction or ADR Deduction which was not claimed or was disallowed or recap-

tured and the Lessee shall forthwith pay to the Lessor as additional rental the amount of any interest or penalty which may be assessed by the United States against the Lessor attributable to the loss of all or any portion of the Investment Credit, the Interest Deduction or ADR Deduction, provided, however, that such rental rate shall not be so increased nor shall the Lessee be obliged to the Lessor for such interest or penalty if the Lessor shall have lost, or shall not have or shall have lost the right to claim, or if there shall have been disallowed with respect to the Lessor all or any portion of the Investment Credit, the Interest Deduction or the ADR Deduction with respect to such Unit as a direct result of the occurrence of any of the following events:

(A) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated pursuant to § 7 hereof;

(B) a voluntary transfer by the Lessor of legal title to such Unit, the disposition by the Lessor of any interest in such Unit or the reduction by the Lessor of its interest in the rentals from such Unit under the Lease (other than as contemplated by the Security Documentation) unless, in each case, an Event of Default shall have occurred and be continuing;

(C) the amendment of the Security Documentation without the prior written consent of the Lessee, if such amendment shall be the cause of such loss;

(D) the failure of the Lessor to claim the Investment Credit, the ADR Deduction or the Interest Deduction in its income tax return for the appropriate year or the failure of the Lessor to follow proper procedure in claiming the Investment Credit, the ADR Deduction or the Interest Deduction with respect to such Unit; or

(E) the failure of the Lessor to have sufficient liability for the tax against which to credit such Investment Credit or income to benefit from the ADR Deduction or the Interest Deduction, as applicable.

The Lessor agrees that if, in the opinion of its or the Lessee's independent tax counsel (herein referred to as Counsel), a bona fide claim to all or a portion of the ADR Deduction, the Investment Credit or the Interest Deduction on any Unit exists in respect of which the Lessee would other-

wise be required to pay to the Lessor pursuant to the immediately preceding paragraph increased rental and additional rental in respect of any interest and/or penalty, the Lessor shall upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by either Counsel in order to sustain such claim; provided, however, that the Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein in a form satisfactory to the Lessor. The Lessor may, at its option, take such action prior to making payment of any tax and interest and/or penalty attributable to the disallowance or recapture with respect to the Lessor of all or any portion of the Investment Credit, the Interest Deduction or the ADR Deduction on any Unit (hereinafter called a Tax Payment) or may make such Tax Payment and then sue for a refund. If the Lessor takes such action prior to making such Tax Payment, such increased rental and additional rental need not be paid by the Lessee while such action is pending. In such case, if the final determination shall be adverse to the Lessor, the increased rental shall be computed by the Lessor as of the date of such final determination and the Lessee shall commence payment thereof on the rental payment date next succeeding such final determination and, on or before such rental payment date, the Lessee shall pay to the Lessor as additional rental an amount equal to all interest and penalty paid by the Lessor in respect of such final determination, together (if the Lessee, at its option, shall not have paid such interest and penalty to the Lessor on the date such payment is made by the Lessor) with interest thereon from the date such payment is made by the Lessor to the date the Lessee reimburses the Lessor therefor at the highest prime rate charged by any of the four New York City banks having the largest total assets in effect on the date of such final determination (hereinafter called the Prime Rate). If the Lessor makes such Tax Payment and then sues for a refund, such increased rental shall commence to be payable by the Lessee on the first rental payment date after such Tax Payment is made and, on or before such rental payment date, the Lessee shall pay to the Lessor as additional rental any amount equal to all interest and penalty paid by the Lessor included in such Tax Payment. In such case, if the final determination shall be in favor of the Lessor, the rental payable by the Lessee to the Lessor shall be reduced to the rental rate that would have been in effect if such increase had not been made (or such reduction shall be made propor-

tionately if the final determination is partly in favor of and partly adverse to the Lessor) and such reduced rental shall be payable by the Lessee on the rental payment date next succeeding such final determination and thereafter. In addition, the Lessee and the Lessor shall adjust their accounts so that (i) the Lessor pays to the Lessee (A) an amount equal to the increase in rentals received by the Lessor theretofore paid by the Lessee to the Lessor (or a proportionate part thereof if the final determination is partly in favor of and partly adverse to the Lessor) on or before such next succeeding rental payment date together with interest thereon at the Prime Rate for the period such increase in rentals received by the Lessor was paid to the Lessor to the date the Lessor pays to the Lessee an amount equal to such increase and (B) the amount of any penalty or interest refunded to the Lessor as a result of such final determination and any interest paid to the Lessor by the government on such refund, promptly upon receipt thereof and (ii) the Lessee pays to the Lessor an amount equal to interest at the Prime Rate on the amount of the tax refund made in respect of the Tax Payment (excluding any interest or penalty included therein) for the period from the date of the original payment of the Tax Payment by the Lessor to the date such tax refund is received by the Lessor, such Prime Rate to be calculated in either case as from time to time in effect during the respective periods.

In the event that any payment or adjustment is required to be made pursuant to the two immediately preceding paragraphs or subsection (b) of this § 16 and such payment or adjustment is to be made on succeeding rental payment dates or on or before the next succeeding rental payment date, but at such time this Lease shall have been terminated or rent shall otherwise no longer be due and payable on the remaining rental payment dates, (A) the Lessee shall promptly pay the Lessor an amount, if any, otherwise payable and not theretofore paid by it, equal to the incremental increase in rent which would have been required if the earlier of the final determination and the Tax Payment had occurred immediately prior to the last rental payment date on or prior to the termination of this Lease and (B) each party required to make payment shall promptly pay all amounts otherwise payable and not theretofore paid by it in respect of interest and penalty (and interest thereon) and previously reimbursed increments of rent calculated by reference to the actual applicable dates of final determination, Tax Payment and reimbursements pursuant to the immediately preceding paragraph.

(b) Rental Adjustment For Lessee's Capital Expenditures. In the event and to the extent that the cost of any improvement and/or addition (hereinafter called Capital Expenditures) to a Unit made by the Lessee, under and pursuant to the terms of this Lease or otherwise, is required to be included in the gross income of the Lessor for Federal income tax purposes at any time prior to the time such Unit is disposed of in a taxable transaction, then the rentals for the Units set forth in § 3 hereof shall, on the next succeeding rental payment date after the date on which the Lessee is required to furnish written notice thereof to the Lessor pursuant to the last paragraph of this subsection (b) after said inclusion in the Lessor's gross income is required, be increased to such amount or amounts as shall, in the reasonable opinion of the Lessor, after taking into account any present or future tax benefits that the Lessor reasonably anticipates it will derive from its additional investment in the Units by reason of said inclusion (including without limitation any current deductions, future depreciation deductions and investment tax credit), cause the Lessor's net return (calculated on the same basis as used by the Lessor in originally evaluating this transaction) to equal the net return that would have been realized by the Lessor if the cost of such Capital Expenditures had not been includible in the Lessor's gross income.

In determining the present or future tax benefits to be taken into account by the Lessor in establishing the rental increase required hereby, the Lessor shall attempt to maximize such benefits and hence minimize the increase in rents by making such elections (including where advantageous the applicable asset guideline repair allowance and accelerated depreciation, if then permitted) and utilizing such conventions and accounting methods as will further such objectives; provided, however, that the Lessor shall not be required to make any election or utilize a particular convention or accounting method if the Lessor determines, in its sole discretion but in good faith, that in so doing it will adversely affect its Federal income tax liability determined without regard to this transaction.

For purposes of this subsection the cost of Capital Expenditures made by the Lessee shall be deemed to be "required to be included in the gross income of the Lessor for Federal income tax purposes" if such inclusion is required by (i) any private ruling letter issued to the Lessor by the Internal Revenue Service that has not been revoked or otherwise

rendered inapplicable at the time the cost of said Capital Expenditures is incurred; (ii) any provision of the Code or the applicable regulations thereunder; or (iii) any published revenue ruling of the Internal Revenue Service which has not been held invalid by a court having ultimate appellate jurisdiction over the Federal income tax liability of the Lessor.

As a condition of any increase in rentals pursuant to this subsection, the Lessor will, upon the written request and at the sole expense of the Lessee (A) seek a modification of any private ruling letter described in (i) of the preceding paragraph to eliminate the requirement that the cost of Capital Expenditures be included in the Lessor's gross income and (B) contest the inclusion of the cost of Capital Expenditures in its gross income if such inclusion is required pursuant to (ii) or (iii) of the preceding paragraph in such forum as it, in its sole judgment but with due regard to the Lessee's advice, shall select; provided, however, that the Lessor shall not be required to contest such inclusion unless it has received an opinion from independent counsel selected by the Lessee and acceptable to the Lessor that there is a reasonable basis for contesting such inclusion and the Lessee has advanced to the Lessor such sums as the Lessor may reasonably deem necessary to pay the costs of such contest.

The Lessee agrees that, within 30 days after the close of any calendar year (or in the event the Lessor gives the Lessee written notice that the Lessor's taxable year closes on a date specified therein other than December 31, within 30 days after said date) in which the Lessee has made Capital Expenditures which are required to be included in the gross income of the Lessor for Federal income tax purposes prior to the time such Unit is disposed of in a taxable transaction, the Lessee will give written notice thereof to the Lessor describing such Capital Expenditures in reasonable detail and specifying the cost thereof with respect to each Unit.

(c) Miscellaneous. For purposes of this § 16, the term "Lessor" shall include any affiliated group, within the meaning of Section 1504 of the Code, of which the Lessor is a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes.

In the event that rental rates shall be adjusted

as hereinabove provided in this § 16, applicable Casualty Values set forth in § 7 hereof shall be appropriately adjusted (but in no event shall they be reduced below the corresponding Casualty Values as defined in the Security Documentation). The Lessee's and the Lessor's agreements to pay any sums which may become payable pursuant to this § 16 shall survive the expiration or other termination of this Lease.

For purposes of this § 16 and clause (ii) of the first paragraph of § 10 hereof, if an amount is to be determined "in the reasonable opinion of the Lessor" and the Lessee disagrees with the Lessor's determination of such amount, then the determination of such amount shall be made by a third party acceptable to both the Lessee and the Lessor; provided, however, that until such third party shall have made a determination, the Lessor's determination shall govern.

§ 17. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 10-1/2% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 18. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid and addressed as follows:

(a) if to the Lessor, at One Tower Square, Hartford, Connecticut 06115, Attention of: Securities Department--Private Placement Division; and

(b) if to the Lessee, at 90 Half Day Road, Lincolnshire, Illinois 60015, Attention of Donald B. Romans;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Agent at 79 South Main Street, Salt Lake City, Utah 84111, Attention of Trust Department, Corporate Division, and to ITEL Leasing Corporation, One Embarcadero Center, San Francisco, California 94111, Attention of Contract Administration.

§ 19. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Except for the Participation Agreement, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 20. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor shall be deemed to be the original counterpart. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

UNION TANK CAR COMPANY,

by

[Corporate Seal]

\_\_\_\_\_  
Vice President

Attest:

\_\_\_\_\_  
Assistant Secretary

THE TRAVELERS INSURANCE COMPANY,

by

[Corporate Seal]

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Assistant Secretary

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF LAKE, )

On this            day of April 1976, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is Vice President of UNION TANK CAR COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

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Notary Public

[Notarial Seal]

My Commission expires

STATE OF CONNECTICUT, )  
 ) ss.:  
COUNTY OF HARTFORD, )

On this            day of April 1976, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is            of THE TRAVELERS INSURANCE COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said company, that said instrument was signed and sealed on behalf of said company by authority of the Finance Committee of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said company.

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Notary Public

[Notarial Seal]

My Commission expires

SCHEDULE A TO LEASE

<u>Type and ADR Mechanical Designation</u>	<u>Quantity</u>	<u>Lessee's Road Numbers</u>
52'6" 70-ton single sheath steel box car; AAR Mechanical Designation XM or XP	175	CPAA 207500-207614 and 208000-208059

Annex D to  
Conditional Sale Agreement

ASSIGNMENT OF LEASE AND AGREEMENT  
dated as of December 1, 1975 (hereinafter  
called this Assignment), by and between THE  
TRAVELERS INSURANCE COMPANY (hereinafter  
called the Lessor or the Vendee), and FIRST  
SECURITY BANK OF UTAH, N. A., a national  
banking association, not in its individual  
capacity but solely as Agent (hereinafter  
called the Vendor) under a Participation  
Agreement dated as of the date hereof.

WHEREAS the Vendee is entering into a Conditional  
Sale Agreement dated as of the date hereof (hereinafter  
called the Security Documentation) with PACCAR INC (here-  
inafter called the Builder) providing for the sale to the  
Vendee of such units of railroad equipment (hereinafter  
called the Units) described in Annex B thereto as are deliv-  
ered to and accepted by the Vendee thereunder;

WHEREAS the Lessor and Union Tank Car Company  
(hereinafter called the Lessee) have entered into a Lease  
of Railroad Equipment dated as of the date hereof (herein-  
after called the Lease), providing for the leasing by the  
Lessor to the Lessee of the Units; and

WHEREAS, in order to provide security for the obli-  
gations of the Lessor under the Security Documentation and as  
an inducement to the Vendor to invest in the Conditional Sale  
Indebtedness (as that term is defined in the Security Docu-  
mentation), the Lessor has agreed to assign for security pur-  
poses its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises  
and of the payments to be made and the covenants hereinafter  
mentioned to be kept and performed, the parties hereto agree  
as follows:

1. The Lessor hereby assigns, transfers and sets  
over unto the Vendor, as collateral security for the payment  
and performance of the obligations of the Lessor as Vendee,

all the Lessor's right, title and interest, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the Security Documentation, and to provide for the payments required to be made by the Vendor pursuant to the last paragraph of Paragraph 7 of the Participation Agreement, and, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default thereunder shall have occurred and be continuing, any balance shall be paid to the Lessor on the same date such Payment is applied to satisfy such obligations of the Lessor, by check mailed to the Lessor on such date at P.O. Box 1612, Stamford, Connecticut 06904 with notice of payment to The Travelers Insurance Company, Attention of: Cashier Hatheway, Securities Department-Private Placement Division. If the Vendor shall not receive any rental payment under the first paragraph of § 3 of the Lease when due, the Vendor shall notify the Lessor at the address set forth in the Lease; provided, however, that the failure of the Vendor to so notify the Lessor shall not affect the obligations of the Lessor hereunder or under the Security Documentation.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment

shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

3. The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Lessor; without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void. At the Lessor's sole cost and expense, the Lessor will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of the Lessor under the Lease.

4. The Lessor does hereby irrevocably constitute the Vendor the Lessor's true and lawful attorney, with full power (in the name of the Lessor, or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Vendor may deem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Lessor's obligations under the Security Documentation and the Participation Agreement, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor.

6. The Lessor will pay and discharge any and all liens, charges or security interests (other than those created by the Security Documentation) on the Lease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Lessor or its successors and assigns (other than the Vendor), not arising out of the transactions contemplated by the Security Documentation or the Lease (but including tax liens arising out of the receipt of the income and proceeds from the Units), which if unpaid, might become a lien, charge or security interest on or with respect to the Lease or such rentals or other payments equal or superior to the Vendor's security interest therein, unless the Lessor shall be contesting the same in good faith by appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect such interests of the Vendor.

7. The Lessor will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure the interest of the Vendor hereunder.

8. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

9. This Assignment shall be governed by the laws of the State of Connecticut, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

10. The Lessor shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 21 of the Security Documentation, or at such other address as the Vendor shall designate.

11. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as an event of default under the

6. The Lessor will pay and discharge any and all liens, charges or security interests (other than those created by the Security Documentation) on the Lease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Lessor or its successors and assigns (other than the Vendor), not arising out of the transactions contemplated by the Security Documentation or the Lease (but including tax liens arising out of the receipt of the income and proceeds from the Units), which if unpaid, might become a lien, charge or security interest on or with respect to the Lease or such rentals or other payments equal or superior to the Vendor's security interest therein, unless the Lessor shall be contesting the same in good faith by appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect such interests of the Vendor.

7. The Lessor will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure the interest of the Vendor hereunder.

8. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

9. This Assignment shall be governed by the laws of the State of Connecticut, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

10. The Lessor shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 21 of the Security Documentation, or at such other address as the Vendor shall designate.

11. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as an event of default under the

Security Documentation has not occurred and is not then continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Lessor to the Vendor by this Assignment and which are for the sole benefit of the Lessor, without the prior consent of the Lessor.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

THE TRAVELERS INSURANCE COMPANY

by

\_\_\_\_\_  
Title:

[Corporate Seal]

Attest:

\_\_\_\_\_

FIRST SECURITY BANK OF UTAH, N. A.,  
Not in its individual capacity  
but solely as Agent,

by

\_\_\_\_\_  
Authorized Officer

[Corporate Seal]

Attest:

\_\_\_\_\_  
Authorized Officer

STATE OF CONNECTICUT    )  
                              ) ss.:  
COUNTY OF HARTFORD,    )

On this           day of April   , 1976, before me personally appeared           , to me personally known, who, being by me duly sworn, says that he is a           of THE TRAVELERS INSURANCE COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of the Finance Committee of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

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Notary Public

[Notarial Seal]

My Commission expires

STATE OF UTAH,                    )  
                                      ) ss.:  
COUNTY OF SALT LAKE,        )

On this            day of April    , 1976, before me personally appeared                    , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, N. A., that one of the seals affixed to the foregoing instrument is the corporate seal of said bank and that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank.

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Notary Public

[Notarial Seal]

My Commission expires

## LESSEE'S CONSENT AND AGREEMENT

The undersigned, UNION TANK CAR COMPANY, a Delaware corporation (hereinafter called the Lessee), the lessee named in the Lease (hereinafter called the Lease) referred to in the foregoing Assignment of Lease and Agreement (hereinafter called the Lease Assignment), hereby acknowledges receipt of a copy of the Lease Assignment, consents to all the terms and conditions of the Lease Assignment and agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly not later than 11:00 a.m. on the date such payments are due in immediately available Salt Lake City funds to FIRST SECURITY BANK OF UTAH, N.A. (hereinafter called the Agent), the assignee named in the Lease Assignment, at 79 South Main Street, Salt Lake City, Utah 84111, Attention of Trust Department, Corporate Division (or at such other address as may be furnished in writing to the Lessee by the Agent);

(2) the Agent shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Agent were named therein as the Lessor;

(3) the Agent shall not, by virtue of the Lease Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of the Agent, be terminated or modified, nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Agent by signing the acceptance at the foot hereof, shall

be deemed to be an agreement under the laws of the District of Columbia and, for all purposes, shall be construed in accordance with the laws of said jurisdiction.

UNION TANK CAR COMPANY,

by

[Corporate Seal]

\_\_\_\_\_  
Vice President

Attest:

\_\_\_\_\_  
Assistant Secretary

The foregoing Consent and Agreement is hereby accepted, as of the first day of December 1975.

FIRST SECURITY BANK OF UTAH,  
N.A., Not in its individual  
capacity but solely as Agent,

by

\_\_\_\_\_  
Authorized Officer

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF LAKE, )

On this       day of April       , 1976, before me personally appeared Donald B. Romans, to me personally known, who, being by me duly sworn, says that he is a Vice President of UNION TANK CAR COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

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Notary Public

[Notarial Seal]

My Commission expires